

REMARKS

By this amendment, claims 1, 2, 7-10, 12, 14, 19, 20, 22-24, 29-32, and 35-41 are pending, in which claims 4-6, 13, 15, 16, 18, 26-28 and 34 are canceled without prejudice or disclaimer, and claims 1, 9, 23 and 31 currently amended. Claims 3, 11, 17, 21, 25 and 33 were previously canceled. These changes merely incorporate features found in the dependent claims that were previously examined and searched, and thus, are not believed to raise new issues requiring further consideration and/or search. It is therefore respectfully requested that the present amendment be entered under 37 C.F.R. §1.116.

As an initial matter, the statement of rejection on page 2 of the Office Action appears to incorrectly refer to U.S. Pat. No. 6,389,464 for the *Cohen et al.* reference; however, the '464 patent does not correspond to the inventors *Cohen et al.* Applicants' research reveals that the correct reference no. should be 6,389,462. Therefore, the analysis and arguments presented herein assume the correct reference to be U.S. Pat. No. 6,389,462 to *Cohen et al.*

The final Office Action mailed August 1, 2006 rejected claims 1, 2, 4, 5, 7, 9, 10, 13, 15, 16, 19, 20, 23, 24, 26, 27, 29, 31, 32 and 36-41 under 35 U.S.C. § 102 as anticipated by *Cohen et al.* (US 6,389,462), and claim 6 under 35 U.S.C. § 103 as obvious over *Cohen et al.* in view of *Jungck et al.* (US 7,032,031).

To reduce issues for Appeal, Applicants have amended independent claims 1, 9, 19, and 23 to incorporate features found in dependent claims 4 and 26 (now canceled). These amended independent claims recite "the transport layer switching mechanism **residing in a host that is loaded with the application.**"

In rejecting dependent claim 4, the Office Action (on page 3) refers to col. 6, lines 23-31. Applicants' review of this cited passage reveals no such disclosure, rather the cited passage states the following (Emphasis Added):

With reference to FIG. 1, a plurality of clients 101-1-101-N are connected to a local area network (LAN) 102, such as an Ethernet. LAN 102, which, in turn, is connected through a **router 103 to a Level 4 (L4) switch 104 (proxy redirector) which interfaces the LAN with a wide area network (WAN) 105**, such as the Internet. Although shown as **two separate elements, the functionalities of router 103 and proxy redirector 104 can in actual practice be combined in a single unit.**

At best, the above passage discloses that the L4 switch can be made a part of the router 103. There is no mention of any host, much less a "host that is loaded with the application." As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference, based on the foregoing, it is clear that *Cohen et al.* fails to anticipate amended independent claims 1, 9, 19, and 23.

Additionally, Applicants amended independent claim 31 to incorporate the features of dependent claim 6; the amended claim now recites "the transport layer switching logic **residing in a modem that is configured to communicate over a satellite network.**" The Office Action, on page 5, acknowledges that *Cohen et al.* fails to disclose this feature, and thus, is forced to rely on *Jungck et al.* for such a supposed teaching, citing col. 8, lines 44-51 and col. 3, lines 49-53. These passages are provided as follows:

(col. 3, lines 49-53)

The **communications paths 128 of a network 100, such as the Internet, can be coaxial cable, fiber optic cable, telephone cable, leased telephone lines such as T1 lines, satellite links**, microwave links or other communications technology as is known in the art. The hardware and software which allows the network to function is known as the "infrastructure." A network 100 can also be characterized by the type of data it carries (voice, data, or both) or by the network protocol used to facilitate communications over the network's 100 physical infrastructure.

(col. 8, lines 44-51)

Every client 102, 104, 106 and every server 108, 110, 112 must have a unique IP address so that the network 100 can reliably route communications to it. Additionally, clients 102, 104, 106 and servers 108, 110, 112 can be coupled with proxy servers (forward, reverse or transparent), discussed in more detail below, which allow multiple clients 102, 104, 106 or multiple servers 108, 110, 112 to be associated with a single domain name or a single IP address. In addition, a particular server 108, 110, 112 may be associated with multiple domain names and/or IP addresses for more efficient handling of requests or to handle multiple content providers, e.g. multiple Web sites, on the same server 108, 110, 112.

These passages discuss in general terms that a network, such as the Internet, can employ satellite links. First, there is no discussion of the claimed modem. *Jungck et al.* discloses a modem for dial-up over a telephone line (*see e.g.*, col. 5, lines 42-60).

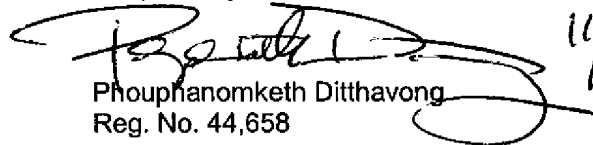
Furthermore, there is simply no suggestion for the modification proposed by the Examiner; that is, the teaching of use of satellite links would not motivate one of ordinary skill in the art to modify a modem to include the transport layer switching mechanism, particularly when the base reference of *Cohen et al.* only describes the possibility employing a L4 switch in a router. A conclusion of obviousness is not compelled by the fact that the prior art could be modified so as to result in the combination defined by the

claims; obviousness turns on whether the prior art suggests the desirability of the modification. The requisite motivation to establish a *prima facie* case of obviousness cannot be established by undercutting the expressed objectives of an applied reference. See *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992); *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); *In re Schulpen*, 390 F.2d 1009, 157 USPQ 52 (CCPA 1968).

Accordingly, Applicants respectfully request withdrawal of the obviousness rejection.

Therefore, the present application, as amended, overcomes the rejection of record and is in condition for allowance. Favorable consideration of this application is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (301) 601-7252 so that such issues may be resolved as expeditiously as possible. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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